



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 211201-0248]

RIN 0648-BK98

Extension of the Authorized Restricted Tow Times in Lieu of Turtle Excluder Devices for an Additional 30 Days by Shrimp Trawlers in Specific Louisiana Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishers to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in specific Louisiana State waters (from 91° 23' West longitude eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles (5.6 kilometers)). This action is necessary because environmental conditions resulting from Hurricane Ida are preventing fishers from using TEDs effectively.

DATES: Effective from December 7, 2021, through January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Bob Hoffman, 727-824-5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding

populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA, if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED – the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain

specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. Namely, TEDs can become clogged with debris, which can prevent target species from passing into the codend of the net and sea turtles from escaping through the TED opening. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. For a trawl that is not attached to a door, the tow time begins at the time the codend enters the water and ends at the time the codend is emptied of catch on deck. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 21, 2021, we received a request from the Louisiana Department of Wildlife and Fisheries (LDWF) to allow the use of tow times as an alternative to turtle excluder devices (TEDs) because of excessive storm-related debris on the fishing grounds due to Hurricane Ida. We subsequently issue a temporary rule allowing tow times as an alternative to TEDs in Louisiana waters bounded by 91° 23' West longitude (*i.e.*, where the COLREGS demarcation line intersects the ship channel coming out of the Atchafalaya River), eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles (5.6 kilometers) (86 FR 61712, November 8, 2021). This authorization runs from November 5, 2021, through December 6, 2021. On November 17, 2021, we

received a request from LDWF requesting a 30 day extension of the authorization (December 7, 2021-January 5, 2022) for the same areas because of the continued presence of storm related debris in the area.

Continuing investigation by the Southeast Fisheries Science Center, Pascagoula Lab, Gear Monitoring Team has documented that debris is still affecting fishermen's ability to use TEDs effectively within the area bounded by $91^{\circ} 23'$ West longitude (*i.e.*, where the COLREGS demarcation line intersects the ship channel coming out of the Atchafalaya River), eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles.

Special Environmental Conditions

The AA finds that debris washed into hurricane-affected Louisiana state waters has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in specific Louisiana state waters (from $91^{\circ} 23'$ West longitude eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles (5.6 kilometers)). Tow times must be limited to no more than 55 minutes until October 31, and no more than 75 minutes thereafter, as measured from the time that the trawl doors enter the water until they are removed from the water. For a trawl that is not attached to a door, the tow time begins at the time the codend enters the water and ends at the time the codend is emptied of catch on deck.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if they can do so effectively, even though they are authorized under this action to use restricted tow times.

NMFS gear experts have provided several general operational recommendations to fishers to maximize the debris exclusion ability of TEDs that may allow some fishers

to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in hurricane-affected Louisiana state waters (*i.e.*, from 91° 23' West longitude eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles (5.6 kilometers)) for a period of 30 days. Through this temporary rule,

shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notification in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on January 5, 2022, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing effective protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice

and comment would prevent the agency from providing the affected industry relief from the effects of Hurricane Ida in a timely manner, while continuing to provide effective protection for sea turtles.

For the same reasons, the AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

Authority: 16 U.S.C. 1531-1543

Dated: December 2, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.